

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 1311 of 1997
in
SPECIAL CIVIL APPLICATION No 3678 of 1997
with
LETTERS PATENT APPEAL No 1488 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE C.K.THAKKER and
MR.JUSTICE A.L.DAVE

- =====
1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

K V GARASIYA

Versus

BABUBHAI N GAVIT

Appearance:

1. LETTERS PATENT APPEAL No. 1311 of 1997
MR PARESH UPADHYAY for Appellant
MS PREETI S. PARMAR & MR. S.V. PARMAR FOR NO.1
MR ST MEHTA, AGP, INSTRUCTED BY MR DA BAMBHANIA
Solicitor to Govt. for Respondent No. 2
MR LR PUJARI for Respondent No. 3
 2. LETTERS PATENT APPEAL No 1488 of 1997
MR LR PUJARI for Appellant
MS PREETI S. PARMAR & MR. S.V. PARMAR FOR NO.1
MR ST MEHTA, INSTRUCTED BY MR DA BAMBHANIA,
Solicitor to Govt. for Respondent No. 2
MR LR PUJARI for Respondent No. 3
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CORAM : MR.JUSTICE C.K.THAKKER and

MR.JUSTICE A.L.DAVE

Date of decision: 18/06/98

ORAL JUDGEMENT

1. These appeals arise out of an order passed by the learned Single Judge in Special Civil Application No.3678 of 1997, on 29th September, 1997.

2. Respondent No.1-original petitioner had applied for the post of Personal Assistant (Non-Technical) to the Chief Town Planner and was placed at the top of the select list by Gujarat Public Service Commission ("GPSC" for short). The application was given by him pursuant to an advertisement that was published by GPSC, a copy of which is produced at Annexure-A. There were certain other candidates also, who had applied and, after the select list was prepared, name of respondent No.1 was recommended by GPSC to the Government for appointment.

3. Upon verification of the documents, the Government Department found that respondent No.1 did not possess the requisite qualifications and, therefore, there was an exchange of correspondence and, ultimately, it was found that because he did not possess the requisite qualification of about 5 years' experience as required, his name was checked off the select list.

4. Being aggrieved by that decision of GPSC, respondent No.1 preferred Special Civil Application 3678 of 1997 challenging that decision, wherein he joined the State of Gujarat and the GPSC as respondents. The learned Single Judge, after considering the case of both the sides, came to the conclusion that the crux of the case lied in deciding the question whether the qualification of experience of about five years in case of eligible candidates should have been gained before acquiring the requisite academic qualification or thereafter. Considering the facts and circumstances of the case and relying upon a decision of the Punjab and Haryana High Court in the case of Shri Sahig Ram Kumar v. Secretary, Haryana State Public Service Commission, 1973(1) SLR, 1039, the learned Single Judge came to the conclusion that the qualification of experience required of an eligible candidate could be even before acquiring academic qualification and, ultimately, while allowing the petition, directed that the State of Gujarat shall consider the original recommendation of GPSC for appointment of the petitioner to the post of Personal Assistant (Non-Technical) to the Chief Town Planner, GSS

Class II on the basis of selection order made by the Commission and as conveyed under communication dated 30th November, 1996.

5. Now the present appellant, who had also appeared at the interviews and who was also selected and was placed on the top of the waiting list, having learnt about this order and having been aggrieved thereby, with a special permission, has preferred Letters Patent Appeal No. 1311 of 1997. Aggrieved by the order passed by the learned Single Judge, GPSC has preferred Letters Patent Appeal No.1488 of 1997.

6. The contentions that are raised are that the original petitioner, who is respondent No.1 in these appeals, did not possess the requisite qualification of experience of about 5 years', as rightly concluded by GPSC. It is contended that the learned Single Judge's conclusion that the experience gained before acquiring academic qualification may be taken into consideration is erroneous in light of various decisions of the Apex Court. Respondent No.1-original petitioner graduated on 10th April, 1992. The application was supposed to reach before 1st April, 1996 and, therefore, respondent No.1 could not be said to have met with the requirement of 5 years' experience, as expected of him. The qualification of experience must necessarily succeed the acquisition of academic qualification. In this regard, reliance was placed on the decision of the Supreme Court in the case of N. Suresh Nathan and Another v. Union of India and Others AIR 1992 SC 564 and 1996(8) SCC 234. Reliance was also placed on the decision in the case of Bhagwati Prasad v. Delhi State Mineral Development Corporation, (1990) 1 SCC 361. All these decisions go to show that experience gained before acquiring academic qualification cannot be taken into consideration. Mr. Upadhyay, learned counsel appearing for the appellant in Letters Patent Appeal No.1311 of 1997 has reiterated these grounds. He also submitted that although the GPSC is a constitutional body, it only acts as an advisor to the Government for making recruitment or making selection. The advertisement carried a specific averment of these qualifications. Besides this, the rules that are framed for recruitment to this post, which are framed under proviso to Article 309 of the Constitution, by the Panchayat and Health Department, Gandhinagar, also provided about the candidate requiring 5 years' experience. These rules are silent about the dates from which the qualifications will be computed and for that purpose, reliance has to be placed on the provisions of the Gujarat Civil Services Classification and Recruitment

(General) Rules, 1967. Rule 8, sub-rule (8) makes a specific provision in this regard and if that is taken into consideration, respondent No.1 cannot be said to have possessed the requisite qualification of experience of 5 years. Experience, even if it is taken from the date of respondent No.1's graduation, would not make him available an experience of even 4 complete years and, therefore, the learned Single Judge ought not to have taken into consideration the earlier experience.

7. Mr. Pujari, learned counsel appearing on behalf of GPSC in Letters Patent Appeal No.1488 of 1997, while adopting the arguments made by Mr. Upadhyay, submits further that respondent No.1 had only an experience of 3 years and 8 months behind him, which was not sufficient to fulfil the requirement. Rule 3 of the Recruitment Rules is specific about this requirement and, therefore, the decision of GPSC was correct and in accordance with the Rules.

8. Mr. Parmar, learned counsel appearing for respondent No.1 in both the matters, has submitted that the qualification of experience is only preferential as against educational or academic qualification being essential for the post in question. In this regard, he has placed reliance on the Gujarati version of the advertisement inviting applications that was published in the newspaper. He has also relied upon the details of the candidates who were selected by the GPSC, as produced on page 34 of the petition, to show that the Commission while preparing the list has given priority to the academic qualifications of the candidates as listed therein. He also submitted that the experience part has been only given second seat and the candidates without requisite experience of 5 years have also been enlisted therein and, therefore also, the qualification of 5 years' experiences cannot be said to be essential qualification for being posted to the said post. While drawing our attention, Mr. Parmar, submitted that the appellant in LPA no.1311/97 is the least qualified person from the select list and that is how he is placed at the bottom of the list (page 34-35). In this regard, he has placed reliance on the decision of the Supreme Court in the case of Council of Scientific & Industrial Research v. M.V. Shastri (1997) 7 SCC 494.

9. Mr. Parmar submitted further that when there are specific rules providing for the qualifications and recruitment, they would certainly override general provisions and general rules and, as such, Rule 8, sub-rule (8) of Gujarat Civil Services Classification

and Recruitment (General) Rules, 1967 cannot be made applicable to the present case. He submitted that when the necessary qualification "a bachelor's degree either in Arts, Science, Agriculture, Commerce, Law or Engineering of a recognized University or an equivalent qualification with about 5 years' experience in any responsible in an administrative capacity" indicates that experience and academic qualifications cannot be acquired simultaneously, they cannot go together and, therefore, the qualification of experience has to be considered as secondary or at the most preferential.

10. The next contention that was raised by Mr. Parmar was that the selection of respondent No.1-original petitioner was made by GPSC, which is a constitutional body, specially constituted for the purpose and, as such, the Court should be slow in exercising writ jurisdiction.

11. For State of Gujarat, Gujarati is the official language. The rules that are produced before this Court are in English. It can necessarily be presumed that there must be Gujarati version of the rules and that should be considered as the original rules. In absence of Gujarati version of the rules, blind reliance cannot be placed on the English version of the rules. In support of this, he has placed reliance on the advertisement inviting applications, at Annexure-A, which indicates that the qualification of 5 years' experience was considered as preferential as it states that candidates with about 5 years' experience will be given priority. Mr. Parmar's contention was that earlier no such clarification was given either in the advertisement or otherwise that experience of 5 years must necessarily be after acquiring necessary academic qualification and this stand taken by the GPSC, subsequently, of insisting for 5 years' experience after acquiring academic qualifications would amount to amending the qualification clause of the rules, which cannot be permitted. In support of this argument, he has placed reliance upon a decision of the Supreme Court in State of U.P. v. Rafiquddin and Others, (1987) Supp. SCC 401.

12. Lastly, Mr. Parmar submitted that respondent No.1 is a man coming from a remote place of the State. He belongs to Scheduled Tribe and is coming from a strata of society where education is rarely to be found, where he has acquired graduation with First Class and this Court, therefore, may use its discretion for delivering complete justice once he is selected for the post. He has placed reliance on the decision of the Supreme Court in the case of B.N. Saxena v. New Delhi Municipal

Committee and Others, (1990) 4 SCC 205 to indicate that even where such qualification was lacking, the Honourable Supreme Court came to the conclusion that because the incumbent had worked on the post for a long time, the experience gained for a considerable length of time is itself a qualification. Mr. Parmar submitted that GPSC has power to relax the qualifications and powers to have waived the requirement of experience by recommending the name of respondent No.1 for appointment and, therefore, the appeals need not be entertained and no interference in the order passed by the learned Single Judge is called for.

13. Replying to the argument of Mr. Parmar, Mr. Upadhyay submitted that the affidavit filed on behalf of GPSC makes it clear that there was a clerical mistake in the Gujarati version of the advertisement inviting the applications. The advertisement was also published in English newspapers specifying the requirement of qualification in consonance with the recruitment rules. He submitted that, where there are special rules, general rules must give way. But when the special rules are silent about certain procedure, general rules would be applicable. He lastly, tried to distinguish the decision relied upon by Mr. Parmar (1990) 4 SCC 205 by saying that the said decision deals with a case of promotion whereas, in the instant case, the Court is seized of the question relating to direct recruitment and, as such, the said decision cannot be applied to the facts of the present case.

14. Mr. Parmar has raised a contention that once GPSC has recommended the name of a candidate to the Government, its function is over and becomes functus officio. Thereafter whatever correspondence was entered into between the Government and the GPSC and the ultimate decision taken by GPSC on the basis of that correspondence and communicated to respondent No.1 vide communication dated 23rd April, 1997 (Annexure-G) was beyond the authority and jurisdiction of GPSC. In this regard, Mr. Pujari as well as Mr. Upadhyay has submitted that, if paragraph 2 of Annexure-C communication dated 30th November, 1996, intimating respondent No.2 about the recommendation of his name to the Government for the post in question is read, it makes it amply clear that GPSC had acted on prima facie acceptance of the certificates, etc. produced by respondent No.1 and if, subsequently, respondent No.2 is found to be lacking any qualification in consonance with the rules, he would not be entitled to be appointed to the post in question.

15. Now, for deciding the question whether the petitioner possessed requisite qualification of experience or not, certain material and undisputed dates may be mentioned :

- 1) 10th April, 1992 - Petitioner graduated.
- 2) 1st May, 1987 to 12th July, 1987 - He worked as Gruhpati in Dakshin Vibhag Adivasi Madhyamik Kelvani Mandal, At Post Khanpur.
- 3) 10th April, 1992 to 20th July, 1992 - He worked as Accountant with Shri Tan-Man Pradesh Mahila Audhyogik Sahakari Mandali Ltd., Khanda.
- 4) 21st July, 1992 to 10th October 1994 - He worked as Gruhpati (Warden) with Shri Gujarat Vanvasi Kalyan Parishad Chhatralay, Sedumbar.
- 5) 21st October, 1994 till date - He is working as Gruhpati with Shramjivi Sanskar Mandal Valsad Sarvodaya Kumar Chhatralay.

16. A perusal of the Recruitment Rules framed for the post in question under proviso to Article 309 of the Constitution on 22nd February, 1972 indicates that there is no provision specifying the dates from which qualification of experience will be considered or computed. The relevant rule is Rule 3 which can be reproduced as under :-

"3. To be eligible for appointment by direct selection to the post mentioned in rule 2, a candidate must -

(a) be not more than 35 years of age; and

(b) possess a Bachelor's Degree either in Arts, Science, Agriculture, Commerce, Law or Engineering of a recognised University or an equivalent qualification, with about 5 years' experience in any responsible post in an administrative capacity;

Provided that preference may be given to a candidate possessing experience in Land Acquisition matters, Town Planning and Municipal Laws.

Provided, further that the age limit may
be relaxed in favour of a candidate
possessing exceptionally good
qualification or experience or both;
provided further that the upper age limit
may be relaxed in case of Gujarat State
Servants in accordance with the
provisions of the Gujarat Civil Services
Classification and Recruitment (General)
Rules, 1967 as amended from time to
time."

Now, therefore, to consider the question whether the
experience gained by the petitioner before graduation can
be taken into consideration or not, reference may be made
to Rule 8, sub-rule (8) of the Gujarat Civil Services
Classification and Recruitment (General) Rules, 1967,
which reads as under :-

"(8) Where the qualifications prescribed for any
service or post include a qualification as to
practical experience for a given period and
applications are invited for such service or post
the period of practical experience shall be
computed -

(a) Unless otherwise provided in recruitment
rule from the date on which requisite
qualifications are obtained.

(b) With reference to the last date fixed for
receipt of such application."

In this regard, clause (b) of sub-rule (8) makes it very
clear that the qualification as to practical experience
shall be computed with reference to the last date fixed
for receipt of such application, which is 1st April,
1996, in the instant case before us. In this regard, the
proviso to Rule 3 of the Recruitment Rules in question,
if read, also indicates the intention of the Government
of deriving support from the provisions of Gujarat Civil
Services Classification and Recruitment (General) Rules,
1967 and, therefore, when there is no specific provision
in these Rules, reference has to be made to the
provisions of the Gujarat Civil Services Classification
and Recruitment (General) Rules, 1967. Even otherwise it
is settled proposition of law where there is no specific
provision in special rules framed for recruitment to a
post, the general rules shall prevail.

17. In the instant case, it is also to be noted that the special recruitment Rules for the posts in question do not specifically provide for computing the date from which the requisite qualification of experience is to be computed, and therefore, clause (a) of sub-rule (8) of Rule 8 of Gujarat Civil Services Classification and Recruitment(General) Rules, 1967, will come into play which specifically provides that unless it is otherwise provided the period of practical experience shall be computed from the date on which the requisite qualifications are obtained which is 10th April, 1992 in the instant case.

18. The outcome therefore is that the practical experience that can be taken into consideration in the case of respondent no.1 would be from 10th April, 1992 to 1st April, 1996 which would be definitely less than five years qualifying experience. To be exact, it would be 3 years and 8 months. In this regard, it is also to be considered that the argument advanced by Mr. Parmar that the G.P.S.C. has power to relax the experience requirements as conceded to by the other side. Such relaxation is given to the extent of one month for every year of experience, and therefore, also the relaxation can at the most be for 4 months and if that is added the total experience would be 4 years which would be again less than the requisite qualifying experience. This being so, no error seems to have been committed in deciding for considering respondent no.1 as lacking requisite experience, and therefore, even if the power to relax was exercised by the G.P.S.C. it would not have helped respondent no.1 in any manner. Against this, it would not be out of place to observe that when it comes to exercise of discretion by such authority, Court is not supposed to sit in appeal while exercising its extraordinary jurisdiction under Article 226 of the Constitution of India and has to be slow in using its discretion. The period of experience has to be computed after graduation unless contrary is provided is also a proposition settled by the Supreme Court while deciding the case of N. Suresh Nathan and Another v. Union of India and Others, AIR 1992 SC 564. The contention of Mr. Parmar that the qualification of experience is not essential but is only preferential is difficult to be accepted. If the recruitment Rule for the post in question particularly Rule 3 is perused it makes it abundantly clear that the candidate to be eligible must possess a bachelors degree wither in Arts, Science, Agriculture, Commerce, Law or Engineering with about 5 years experience in any responsible post in an

administrative capacity. It is therefore very clear that the candidate must possess both the qualifications, namely, a bachelors decree and about 5 years experience. To overcome this difficulty it was contended that the advertisement inviting applications in Gujarati newspaper averred that the candidates with about 5 years experience will be given preference/priority, and therefore, that must prevail in the instant case. In this regard, the affidavit-in-reply filed on behalf of the G.P.S.C. makes it clear that the advertisement published in English was in consonance with the recruitment Rules, and there was a mistake in the Gujarati advertisement. In our view, such a clerical error cannot create a situation of overriding the rules framed under proviso to Article 309 of the Constitution of India. Such mistakes can definitely be corrected as and when noticed. Such advertisement inviting applications does not confer a right to the candidates applying for such posts.

19. It was contended further by learned Advocate Mr. Parmar on behalf of respondent no.1 that in the State of Gujarat, Gujarati is the official language and there must be Rules of recruitment in Gujarati which can be considered as original one and in absence of such Rules presumption may be drawn in favour of respondent that the Gujarati version of the advertisement is more authentic. There cannot be any dispute about Gujarati being official language in the State but no such presumption or adverse inference can be drawn when specific rules are provided and there is an affidavit on record to indicate that it was only a clerical error in the Gujarati advertisement while translating the qualifying requirements of experience. As such there is no question of any conflicting or contrary interpretation or views being possible because the English advertisement indicates the situation in consonance with recruitment Rules which factum is not controverted by respondents.

20. As regards the contention that the G.P.S.C. could not have written letter Annexure "G" dated 23-4-1997 to respondent no.1 for the reason that after recommending the name of respondent no.2 to the Government it had become functus officio, this contention does not find any support from the facts of the case. If Annexure "C" which is letter intimating respondent no.1 about his name having been placed at serial no.1 in the select-list is perused, it specifically indicates in paragraph (2) that the recommendation is made prima facie accepting the certificates etc. produced by respondent no.1 and that he shall be eligible to be appointed only

after due verification of the documents. It is also stated therein that if at any stage he is found to be lacking the qualifications stated in the advertisement or Rules his candidature shall be cancelled and he will not be entitled to be appointed. Thus, it cannot be said that Annexure "C" was the final letter or decision of the G.P.S.C. regarding selections/ appointment of respondent no.1. In fact, Annexure "G" is the final decision taken by the G.P.S.C. after perusal of all the requisite papers and therefore Annexure "C" cannot be said to be final decision of the G.P.S.C. Besides this, it was only a letter of recommendation which was also conditional and the ultimate decision was to be taken by the Government. The G.P.S.C. can be said to have worked as a communicating agent only and the contention therefore cannot be accepted.

21. Mr. Parmar contended that by taking the action in the instant case an attempt is made to amend the Rules by insisting on experience of five years after attaining academic qualification. It is not possible to accept this argument either because, as discussed above, Rule 8 sub-rule (8) clause (b) of Gujarat Civil Services Classification and Recruitment(General) Rules, 1967 specifically provides that the experience has to be computed from the date on which requisite qualifications are obtained. This rule will be effective because special recruitment rules are silent in this regard. The Hon. Supreme Court has also held the same in the case of N. Suresh Nathan and Another v. Union of India, AIR 1992 SC 564.

22. The last contention raised by Mr. Parmar is that respondent no.1 is a man belonging to Schedule Tribe coming from that strata of society where education is a rarity and as such his case needs to be considered with sympathy. True, it is that the applicant's social position may call for sympathy but it has to be borne in mind that rule of law must prevail.

23. Mr. Parmar placed reliance on the decision in the case of State of U.P. v. Rafiquddin and Others, (1987) Supp. SCC 401 to emphasize that frequent changes in Rules of recruitment and qualifying requirements was deprecated by the Supreme Court. We are afraid the said decision cannot be made applicable to the facts of the present case as in the instant case no attempt is made either by the Government or by the G.P.S.C. for changing Rules or qualifying requirements. The qualifying requirements and the rules existed as they were from the beginning and as such this decision cannot be applied to

the present case.

24. Mr. Parmar has placed reliance on the decision of the Hon. Supreme Court in the case of Council of Scientific and Industrial Research, New Delhi v. M.V. Sastri (1997) 7 SCC 494. It was observed therein that the requirements of experience for the post of Sr. Technical Assistant to Council of Scientific and Industrial Research do not appear to be mandatory, and therefore, the same ratio may be applied in the instant case. In our view, we cannot apply the ratio of the said decision to the facts of the present case for the reason that in that case certain specialized qualifications were expected of a candidate applying for the post in question which was specifically mentioned in the advertisement inviting applications and looking to the text of the advertisement it was held by the Hon. Supreme Court that particular experience of the candidate in question cannot be considered as a specialized experience and the decision was given. In the instant case, the qualifications of experience is specified in the Rules and advertisement and the slip in Gujarati advertisement is specifically averred to, in the affidavit and the same has been detected before respondent no.1 could be given appointment and as such respondent no.1 cannot get the advantage of a bonafide clerical error which is sought to be corrected. After all before appointment is given no right is created in favour of respondent no.1.

In view of the above discussion, we are of the view that both the appeals deserve to be allowed. The decision rendered in Spl.C.A no.3678/97 needs to be quashed and set aside as it is found to be not in consonance with the Rules of recruitment and both these appeals are therefore allowed. The decision of learned Single Judge given in Spl.C.A no.3678/97 on 29-9-1997 is hereby quashed and set aside. No order as to costs.

(C.K.Thakkar,J.)

(A.L.Dave,J.)

Learned counsel for the respondent-original petitioner prays for certificate under Article 132 of the Constitution. In our opinion, no question of general public importance which, in our opinion, needs to be decided by the Supreme Court. We have interpreted relevant provisions of Rules and decided the matter.

Leave is, therefore, refused.

A prayer is also made that the order passed by us may be kept in abeyance for some time so as to enable the appellant to approach higher forum. In the facts and circumstances of the case, the order passed by us is ordered to be kept in abeyance for a period of four weeks from today.

[C.K. THAKKAR, J.]

[A.L. DAVE, J.]

18.6.1998.